

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

CS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/035,536	06/10/98	KINK	J OPHD-03282

VIRGINIA S MEDLEN
MEDLEN AND CARROLL
SUITE 2200
220 MONTGOMERY STREET
SAN FRANCISCO CA 94104

HM12/0823

EXAMINER

MURPHY, J

ART UNIT	PAPER NUMBER
----------	--------------

1646

DATE MAILED: 08/23/01

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/095,536

Applicant(s)

KINK, JOHN A.

Examiner

Joseph F Murphy

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Formal Matters

Claims 1-23 are pending and under consideration.

Response to Amendment

The rejection of claims 1-3, 7-15 and 19-20 under 35 USC 102(e) as being anticipated by U.S. Patent No. 5,747,532 has been withdrawn based on Applicant's arguments.

The rejection of claims 1-23 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,747,532 in view of WO 9814209 has been withdrawn based on Applicant's arguments.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-3, 7-15 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,888,511 (Skurkovich et al.).

U.S. Patent No. 5,888,511 discloses methods of treating autoimmune diseases by administration of antibodies to IL-6 in addition to anti-TNF antibodies (column 5, lines 41-50), thus anticipating claims 7-15. Compositions comprising anti-IL-6 antibodies and antibody to TNF are claimed in claim 3, column 30, lines 10-21, thus anticipating claims 1-3 and 19-20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,888,511 (Skurkovich et al.) in view of WO 9814209.

The disclosure of U.S. Patent No. 5,888,511 has been set forth above. U.S. Patent No. 5,888,511 does not disclose the use on antibodies derived from avian sources. WO 9814209 discloses the use of polyclonal antibodies prepared from chicken eggs to neutralize systemic pathogens in humans (page 1, lines 7-10). WO 9814209 further discloses the advantages of using polyclonal antibodies derived from chicken eggs, including, *inter alia*, hen derived polyclonal antibodies will adhere to more sites on the target protein, and that the product of multiple hens can be blended to give a more uniform product (page 5, line 39 to page 6, line 4). Given the advantages of using polyclonal antibodies derived from hen's eggs, it would have been obvious to one of skill in the art at the time the invention was made to make and use the compositions of antibodies, and practice the methods disclosed in U.S. Patent No. 5,888,511 derived from hens eggs.

Conclusion

No claim is allowed.

Advisory Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Murphy whose telephone number is 703-305-7245. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 703-308-6564. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Joseph F. Murphy, Ph. D.
Patent Examiner
Art Unit 1646
August 20, 2001

Prema Mertz
PREMA MERTZ
PRIMARY EXAMINER